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State Ethics Commission

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SEC A092-181

May 27, 1992

SUBJECT: HHS EMPLOYEES SERVING ON BOARDS OF LOCAL HEALTH CARE
PROVIDER AGENCIES

SUMMARY:

An employee of the Health and Human Services Finance Commission is not prohibited from also serving on the board of a service provider, however, such employee is advised to follow the provisions of Section 8-13-700(B) concerning matters affecting the economic interests of such service provider.

QUESTION:

The Assistant General Counsel for the State Health and Human Services Finance Commission questions whether employees of the agency may serve on the board of directors of a provider of health care services. He also questions whether the same employee may serve on a committee to advise the provider on health care issues. He provides information that the agency is designated to administer the Medicaid program throughout the State. A dozen regional offices coordinate care for persons who are medically eligible but who remain in their home. One employee who coordinates these services in a rural area also serves on the board of directors for a local agency which sells health care services for use by agency recipients. Other employees serve on advisory committees for provider agencies.

May 27, 1992

DISCUSSION:

This opinion is rendered in response to a letter dated March 25, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The Ethics Reform Act does not prohibit a public employee from serving on the board of a related organization. However, such public employee is advised of the provisions of Section 8-13-700(B) which provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Thus, an employee of the Health and Human Services Finance Commission is advised to follow the above procedure on matters affecting the economic interests of the agency on whose board the employee serves. Economic interest is defined in Section 8-13-100(11) as:

(11)(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Based upon the facts as submitted, the State Ethics Commission knows of no reason why a person cannot serve as a member of the a private health care provider provided such service is consistent with the provisions of Section 8-13-700(B).